BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Unbundling of Local Exchange Carrier Common Line Facilities	)	RM-8614

COMMENTS ON PETITION FOR RULEMAKING

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RM-8614

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SUMMARY*

In its Petition for Rulemaking, MFS Communications Company, Inc. (MFS) asks the Commission to initiate a rulemaking proceeding to adopt rules to "unbundle" the "local loop." In reality, MFS' Petition primarily seeks to have the Commission assume jurisdiction over and regulate a portion of local exchange telephone service, at a time when Congress and this Commission are considering comprehensive changes to the existing telecommunications regulatory landscape. The Commission must not fall into the unquestionably unwise and unlawful trap of effectively deregulating the provision of local exchange telephone service, based on a faulty premise, and under the guise of "loop unbundling." Rather, the Commission should address the various access reform petitions that have already been filed with the Commission. These proposals attempt to deal with the myriad of difficult issues which must be resolved in a comprehensive manner, not in a piecemeal manner as MFS proposes.

In its Petition, MFS overlooks the undeniable fact that the "local loop" is an essential element of local exchange service, over which the states have exclusive jurisdiction pursuant to Section 152(b) of the Communications Act. There is no legitimate, overriding federal policy that warrants the drastic preemptive action MFS requests in its Petition. Were the Commission to act as requested by MFS, the end result would undeniably be the asymmetric de facto deregulation of local exchange service throughout the

* All abbreviations used herein are referenced within the text.

nation. MFS' Petition amounts to a request for clearly unlawful and unwise federal preemption and should be summarily rejected as such.

Furthermore, MFS' proposal is based on a flawed economic analysis. The availability of "unbundled loops" is not essential to permit competition in local exchange and interexchange access service. There are numerous alternative technologies available to MFS to provide local exchange service. In light of these numerous alternatives, it would be completely unreasonable to allow MFS to simply "choose the path of least resistance," i.e. access to the LECs' facilities used to provide local exchange service at an unreasonable and artificially low price. Technology and the marketplace have clearly rendered MFS' "bottleneck" and "tying" antitrust arguments moot.

In short, the Commission should reject the proposal contained in MFS' Petition for Rulemaking as untimely, unwise and unlawful.

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COMMENTS ON
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Southwestern Bell Telephone Company (SWBT) hereby files its Comments in response to the Petition for Rulemaking filed by MFS Communications Company, Inc. (MFS) on March 7, 1995.[1] For numerous reasons, MFS' Petition cannot be granted. Instead, the Commission should utilize its scarce and valuable resources to address the various access reform proposals that have already been lodged with the Commission. Each of these proposals attempts to deal with the myriad of difficult issues that must be resolved before other proposals, such as MFS' proposal, can be evaluated. These issues include correcting uneconomic rate distortions and implicit support embodied in current rate levels, developing competitively neutral funding mechanisms to recover quantifiable universal support costs, eliminating improper rate structures, eliminating barriers to new services creation and many other complex issues. MFS merely wants to skip resolution of these issues, seeking to change only what is necessary to advance MFS' business interests. The Commission must not allow MFS to single out what it labels "loop unbundling" without first, or at a minimum

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[1] In the Matter of Unbundling of Local Exchange Carrier Common Line Facilities, RM-8614, Petition for Rulemaking of MFS Communications Company, Inc., filed March 7, 1995 (MFS Petition).

simultaneously, addressing and fixing the current structural and pricing problems with the access charge regime. To do otherwise would be analogous to attempting to build a house before a strong foundation is built. A competitive telecommunications industry will only be as strong as the foundation on which it is built.

No honest competitor would reasonably argue that it is within the province of the federal government to require an efficient competitor to award sums of money to "start-up" entities just for the sake of making those "start-ups" possibly more viable competitors in the future. Yet, stripped to its bare motive, the MFS Petition should be seen as requiring nothing less. Throughout its analysis, the Commission must keep in mind the Supreme Court's often cited statement: "The antitrust laws . . . were enacted for the protection of competition, not competitors."[2]

I. COMMISSION ACTION ON MFS' PETITION WOULD UNLAWFULLY PREEMPT STATE AUTHORITY TO REGULATE LOCAL TELEPHONE SERVICE.

Perhaps the most striking and flawed aspect of MFS' Petition is the assumption that the Commission has authority to preempt state regulation of local telephone service by requiring the "unbundling" of the "local loop." What MFS is asking this Commission to order is mandatory access to a competitor's local exchange facilities, in order to provide, at least in part, local telephone service. MFS claims this Commission has such broad preemptive authority just as it had the authority to require unbundling of customer premises equipment (CPE) and inside wire in

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[2] Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., et al., 429 U.S. 477, 488 (1977).

earlier proceedings, and as it had the authority to require Open Network Architecture (ONA)-related unbundling.[3] However, there are critical distinctions between those earlier cases and MFS' present Petition which render MFS' attempted analogies wholly inapposite.

In the case of both CPE and inside wire, before requiring unbundling the Commission first determined that these items were not common carriage regulable under Title II of the Communications Act.[4] That determination served as the entire basis for the Commission's decision to require that CPE and inside wire be unbundled from tariffed common carrier services. In marked contrast, MFS asks the Commission to "unbundle" one segment of common carriage (i.e., local exchange telephone services provided over local facilities,) from other segments of common carriage. Thus, MFS' reliance on the earlier CPE and inside wire unbundling cases is completely misplaced.

Similarly, MFS' reliance on the Commission's previous ONA unbundling decisions is not well-grounded. In its ONA Proceeding, the Commission was extremely careful to require that only

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[3] MFS Petition at pp. 28-29.

[4] See Amendment of Section 64.702 of the Commission's Rules and Regulations, (Computer II), 77 FCC 2d 384 (1980) (Final Decision), reconsideration, 84 FCC 2d 50 (1981), further reconsideration, 88 FCC 2d 512 (1981), aff'd sub nom. Computer & Communications Industry Association v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 103 S. Ct. 2109 (1983); In the Matter of Detariffing the Installation and Maintenance of Inside Wiring, 85 FCC 2d 818 (1981) (First Report and Order), 59 Rad. Reg. 2d (P&F) 1143 (1986) (Second Report and Order), reconsideration, 1 FCC Rcd 1190 (1986), remanded, National Assoc. of Regulatory Utility Commissioner v. FCC, 880 F.2d 422 (D.C. Cir. 1989), on remand, 5 FCC Rcd 3521 (1990) (Memorandum Opinion and Order on Review), 7 FCC Rcd 1334 (1992) (Third Report and Order), 7 FCC Rcd 1345 (1992) (Memorandum Opinion and Order On Reconsideration).

interstate ONA services be unbundled, taking no preemptive actions in that area whatsoever and stating only that it would conditionally approve a Bell Operating Company's (BOC's) ONA plan upon appropriate treatment of state-tariffed ONA-related services.[5]

In any event, MFS overlooks the undeniable fact that the local loop is a clearly an element of local exchange service which is placed within the exclusive jurisdiction of the states by Section 152(b) of the Communications Act. 47 U.S.C. §152(b). MFS asserts that the local loop is a "jurisdictionally mixed" component of telecommunications and therefore the Commission may preempt the states in mandating that the local loop be unbundled from the remainder of local exchange service.[6] But the critical flaw in MFS' whole approach here is that MFS is presuming that increasing the level of local exchange (i.e., intrastate) service competition is somehow an interstate and hence federal issue. There is no logical or legal basis for this presumption. Therefore, even under Louisiana PSC as cited by MFS,[7] by definition there can be no legitimate, overriding federal policy here that warrants preemptive action in the first place.

Finally, all else aside, it is simply undeniable that, should the Commission take the actions urged by MFS, the end result would be asymmetric de facto deregulation of local exchange service throughout the nation, without any state commission having had any

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[5] See Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, Memorandum Opinion and Order, 4 FCC Rec 1 (1988) (BOC ONA Order), paras. 309-312.

[6] MFS Petition at p. 31.

[7] Id.

say as to whether or how to carry out this purely intrastate action. This action would seriously overstep the Commission's jurisdictional boundaries and interfere directly with matters exclusively reserved by the Communications Act to the states. The fact that there may be jurisdictionally mixed use of local loops does not alter the unquestionable legal right of the several states under Section 152(b) to establish entry requirements for local exchange service providers. MFS' Petition amounts to a request for clearly unlawful preemption and should be summarily rejected as such.

Furthermore, besides being patently unlawful, preemption of the states in this area would be bad public policy. Clearly, the unbundling requested by MFS would have a major impact on local service rates and rate structures as well as on the continued ability of states to sustain universal service. Local rates and rate structures vary widely among the states and have been designed to achieve a variety of goals. Some local rates are cost based and usage sensitive. Most local rates, however, are based on a flat rate, and have been determined based on a residual revenue requirement basis. Many local rates are capped or frozen as a result of state legislation or regulatory agreements. Therefore, a federal "one size fits all" mandate on local rate structure and methods would be counterproductive in such an environment.

II. AVAILABILITY OF UNBUNDLED LOOPS IS *NOT* ESSENTIAL TO ENABLE FULL COMPETITION IN LOCAL EXCHANGE AND INTEREXCHANGE ACCESS SERVICE.

MFS claims that unbundled loops are essential facilities.[8] For technological and economic reasons, MFS is wrong. On both factual and theoretical bases, this initial point of MFS' argument must be rejected, and with it, MFS' Petition.

A. Other Methods Of Meeting MFS' "Needs" Are Available.

The position MFS takes in its Petition is directly contrary to the position MFS has recently taken before the Texas Public Utilities Commission (PUC). In that proceeding, MFS has admitted on the record that "unbundling of the local loop" is not necessary in order for it to satisfy the Texas PUC criteria for grant of a certificate of convenience and necessity to provide competitive local exchange service. In particular, MFSI-TX[9] has stated that there are:

> two possible methods of transmitting and distributing its services to customers. First, it can build its own transmission and distribution facilities terminating at each customer's premises. . . . Second, it can purchase transmission service from, or lease capacity on the facilities of, other entities. Those entities could be (a) MFSI-TX's own affiliates which already offer fiber optic networks . . .; (b) the incumbent LECs; or (c) any other dominant or non-dominant carriers that have suitable telecommunications with LECS. (Comments of MFSI-TX filed January 17, 1995 at p. 4, attached as Exhibit 1).

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[8] MFS Petition at p. 6.

[9] MFS Intelenet of Texas, Inc.

Most significantly, MFSI-TX has admitted, in response to requests for information, that resolution of the unbundling issue is not a prerequisite to enable it to provide local exchange services.

> Request: [W]ill the decision in Order No. 15 to sever unbundling issues in Docket No. 13282 prevent MFSI-TX from providing local exchange service to residential and small business customers whose premises are not located on loop facilities owned by MFSI-TX affiliates in Texas?
>
> Response: No.

MFS' response further states that:

> MFSI-TX has not determined how it will serve particular end users but in general has several alternative methods including 1) asking its affiliates to expand their current network; 2) MFSI-TX could construct its own network facilities, and 3) most probably, MFSI-TX will seek to lease facilities from other vendors including leasing special access and/or private line services from local exchange carriers, as well as subscribing to the network capacity of cable TV systems, other CAPs, private networks or other vendors. (See, MFSI-TX response to Texas' Office of Public Utility Counsel RFI No. 14, dated December 30, 1994 and attached as Exhibit 2). (emphasis added).

When seeking state authority to provide local exchange services and when it suits its purposes, MFS readily admits that unbundled local loops are not necessary for it to serve customers. Moreover, its stated position, at least in Texas, relies on "leasing" existing special access and private line services from LECs to provide local exchange service rather than constructing or leasing loop facilities. In a related docket before the Texas PUC, Teleport Communications Group (TCG) has also provided information (attached as Exhibit 3) that shows its "facilities in place to provide local

exchange service." This information belies MFS' claim that new construction (and cable facilities) are not a feasible means to serve customers for telephony. Numerous Competitive Access Providers (CAPs), including MFS, are building or have plans to build their own local facilities.

In its Petition, MFS broadly claims that existing LEC private lines are also not a feasible alternative to reach its customers. However, when distilled to its key arguments, MFS merely claims that private lines are not usually used to provide switched local exchange service, regulators price them differently, installation intervals are much too lengthy to be practical, and private lines provide unwanted and unneeded features.

None of these claims provide any reason for this Commission to conclude that local private line service is not a feasible alternative for MFS to reach its customers. More importantly, all of the above aspects of private line service that are troubling to MFS are within the jurisdiction of the state PUCs, not this Commission. This Commission should not be called upon to determine whether the state PUCs have priced these services correctly.

What MFS is really asking for is a preferentially priced special access channel termination, or more precisely, a switched access (Feature Group A) entrance facility. MFS is apparently dissatisfied with the rate that it now pays for that service. SWBT's rates for these services are completely reasonable and have been approved by state regulators. MFS appears to be attempting to

find a way to avoid contributing to the implicit supports that are part of the current access charge structure.

Existing intra-state and interstate rates for both switched and special access reflect not only the effect of cost and rate averaging, but also provide implicit support to preserve the public policy goal of universal service. By including the implicit support in the current access charge structure, LECs have been able to provide local exchange service to ALL customers within their serving area at affordable prices. By asking the Commission to require the unbundling of local loops, MFS hopes to avoid contributing to the recovery of these legitimate costs which are recovered in the access services which provide the functionalities desired by MFS. Preferential treatment of this nature should not be considered by the Commission.

Also in its Petition, MFS claims that cable television (CATV) systems are likewise not a feasible means of reaching customers. This position simply has no basis in fact, and at most may be wishful thinking on MFS' part. CATV systems' infrastructures are clearly capable of delivering integrated video and telephony services, and CATV companies appear eager to enter the local telephone business.

One of the largest CATV companies, Time Warner (TW), is conducting a well-publicized trial in Orlando, Florida, and published reports indicate that it will soon offer local telephony in all of its vast service areas.[10] TW has requested state

[10] "Time Warner Plans Switched, Broadband Cable TV System in Florida, Will Compete With BellSouth; IXC, PCS, Video-on-Demand, (continued...)

regulatory approval to provide the same service in Ohio and California. In testimony before the Texas House State Affairs committee, a TW representative recently testified that TW currently provides residential service in Rochester, New York and within five (5) years, TW will be able to offer local telephony over its entire nationwide CATV system. TCG has also been steadily entering the basic local telephone service business. This CAP is intent on becoming a second LEC in its markets.[11] Cox Communications, Inc. also plans to offer local telephone service over its CATV network in its markets nationwide within three years.[12] TCI, the largest CATV multiple system operator, also has plans to provide telephony over its networks.

The CATV industry has been upgrading its plant for the past several years, to meet requirements placed on their networks. To leverage the cost of their investment, CATV operators have been looking for other avenues to generate revenues.[13] Since cable networks already reach most homes, they are very interested in providing telephone service. Their national association, National Cable Television Association (NCTA), has developed a "wish list" of

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[10](...continued)
Interactive Video, Other Services Planned," Telecommunications Reports, p. 37, February 1, 1993. "Cable TV is Calling," Information Week, p. 15, May 30, 1994.

[11] Comment made by Bob Annunziata, Chairman and CEO of TCG, at ALTS' 92 Conference, Dallas, TX, November 4, 1992.

[12] "Cox to Use Cable for Phone Service," Roanoke Times & World News, p. A-7, March 31, 1995.

[13] "Technology and the Future," Time Warner Annual Report - 1992, p. 44.

17 amendments for this year's federal legislation.[14] Many of the points on their wish list deal with telecommunications issues.

The CATV industry is expected to be a primary competitor to the LECs.[15] The CATV industry is beginning to align themselves with strategic partners. Time Warner and US WEST have formed an alliance. Sprint joined a consortium of CATV companies, including TCI, Comcast, and Cox, to enter the emerging PCS market.[16] This consortium will use the CATV networks to handle local traffic, and Sprint will handle the long distance, and provide name recognition for the telephone consumer. These alliances, mergers or acquisitions will continue as the telecommunications industry is reshaped for the competitive marketplace. It is clear that the CATV industry has a strong desire, and economic incentive to leverage its network costs by providing additional network based services such as telephony.

B. MFS' "Essential Facility" Analysis Is Economically Incorrect.

1. Unbundled Loops Are Not Essential Facilities.

MFS claims that the local loop is "the quintessential telecommunications bottleneck facility."[17] This erroneous

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[14] "Cable Goes to Washington, D.C.," Cable World, p. 2, January 23, 1995.

[15] "Statement of Decker Anstrom, President and CEO of National Cable Television Association regarding S. 1822, the Communications Act of 1994 before the Committee on Commerce, Science, and Transportation - United States Senate - Washington, D.C., May 4, 1994"

[16] "PCS Bidding Behemoth Levels Its Sights on Local Phone Markets," High Yield Report, Vol. 5, No. 13, p. 3, April 3, 1995.

[17] MFS Petition at p. 6.

contention is the basis of MFS' arguments that the LECs should unbundle loops and provide them to firms such as MFS to enhance competition. MFS, however, conveniently ignores important antitrust case law based on the very economic principle MFS now claims to espouse: economic efficiency. Using the proper antitrust and economic analyses, it is clear that unbundled loops are not true "essential facilities," and hence MFS' argument in favor of unbundling should be rejected.

In economic terms, whether a so-called "essential facility" exists in an upstream, or wholesale, telecommunications market depends completely on its effect on the competitive process in downstream, or retail, markets. Using the criterion of economic efficiency (which MFS claims to embrace), an upstream facility that has been made more costly to purchase due to a bundling arrangement can only be an essential facility if, absent unbundling, the competitive process in a downstream market is eliminated or forestalled absolutely. Some of MFS' own offerings (and those of other CAPs) to business customers indicate that this is certainly not the case.

Recent judicial decisions involving refusals to deal and essential facilities have supported the economic criterion behind essentiality discussed above, and predictably, MFS fails to cite any of these decisions in its Petition. For example, in Flip Side Productions, Inc. v. Jam Productions, Ltd., the United States Court of Appeals for the Seventh Circuit held that one firm's resource is not vital to competition if an alternative is available to rivals

from other sources.[18] On this point, antitrust scholars Areeda and Hovenkamp conclude that a resource is not essential if competitors can operate effectively without it. For a resource to be essential, it must be more than just helpful, it must be vital to competitive survival.[19] Even this criterion, which MFS' initiative cannot meet, constitutes broader criteria for essentiality than the economic criteria discussed above, since the failure of competitors to survive may not impair a market's economic efficiency (and efficiency is the standard that MFS claims to embrace). Similarly, in Twin Laboratories, the United States Court of Appeals for the Second Circuit ruled that to establish the existence of an essential facility, a would-be rival must show more than inconvenience or even some economic loss; it must show that no alternatives presently exist, and that such alternative facilities cannot practically or reasonably be duplicated.[20] Again, this is clearly not the case for local loops, as MFS itself and several other firms have already physically demonstrated.

The Alaska Air case adhered to an economically sound standard of essentiality, making it clear that to be "essential," the control of a facility must enable the owner to eliminate, not merely impede competition.[21] Interestingly, the Alaska Air court

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[18] 843 F.2d 1024, 1034 (7th Cir. 1988), cert. denied, 488 U.S. 909 (1988).

[19] Phillip Areeda & Herbert Hovenkamp, Antitrust Law ¶ 736.2 (1989 Supp.).

[20] Twin Laboratories, Inc. v. Weider Health & Fitness, 900 F.2d 566, 570 (2d Cir. 1990).

[21] Alaska Airlines, el al. v. United Airlines, et al., 948 F.2d 536 (9th Cir. 1991), cert denied, 112 S. Ct. 1603 (1992).

ruled that the control of a facility that merely enables the owner to gain a monetary profit at its rival's expense is not actionable under the antitrust laws as causing injury to competition.[22] For a facility to be essential, the elimination of competition caused by denial of access to the facility must be "relatively permanent."[23]

If unbundling is mandated by regulators to foster competition, the unbundling must be confined to true "essential facilities," if they exist. However, SWBT already provides interconnection to its network to a wide variety of suppliers with which it competes in retail, or end-user markets, at rates which come under the purview of several state and federal regulatory agencies such as the FCC. Further, the Commission could not sustain a conclusion that unbundled loops are an essential facility, as MFS erroneously claims. Both observed and planned entry into telephone markets currently indicates that the set of truly "essential facilities" is quite small or nonexistent, and does not include "unbundled loops." As mentioned in Section II A, technical trials now being conducted by cable companies (and actual entry so far) indicate that components of telephone service such as local switching and loops are reasonably capable of being duplicated by some entrants. In fact, technical trials now being conducted indicate that in the future, it will likely be possible

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[22] Id. at 546.

[23] Id. at 544, n. 111.

to offer telephony over cable networks without involving local telephone companies at all.

2. Technology Renders MFS' "Bottleneck" Arguments Moot.

There are several reasons why MFS' claims of "bottleneck control" and "essential facilities" are wrong. First, if alternative sources of access to end users are available, then the LEC facility can no longer be considered "essential" or a "bottleneck." Advances in technology are rapidly changing the local exchange landscape. MFS cannot seriously dispute the fact that non-LEC suppliers of telephone services are presently providing connections to end users, primarily to large business customers in urban areas.

Digital technology is making rapid advances in wired and wireless communications and is lowering the cost of transmitting information. Hence, "there are new ways to construct local networks and provide services in a local telephone market, a market that no longer appears to be a 'natural monopoly.'"[24] Alternatives include Personal Communications Services (PCS), cable TV, and satellites. While MFS acknowledges that these technologies exist, it argues extensively that these technologies are not feasible and offer no alternatives to the LEC loops. This is simply not the case. As SWBT demonstrates herein, there is substantial evidence that these technologies are today or soon will be viable alternatives. Therefore, to require unbundling now, on the terms

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[24] U.S. Industrial Outlook 1994 at 29-3 (U.S. Government Printing Office) (U.S. Industrial Outlook 1994).

proposed by MFS, as these new technologies are emerging would result in significant dislocation and uneconomic interest.

CATV companies are likely to become another group of competitors the local telephone companies will face in the near future. CATV companies' transmission facilities are already connected to 60% of U.S. households, and cable facilities extend into areas where another 30% of the households are located.[25] CATV systems are vying to carry voice and data as well as programming, adding one more source of capacity to the market.[26] All of this capacity will drive transmission costs down over the next few years.

For example, Cox Cable states:

> Today, the desire to eliminate duplication is unnecessary and does not serve the public interest. As an example, existing cable television networks, passing nearly 98% of the subscribers in the United States, parallel, and in large part, duplicate LEC facilities. In addition, cable television's hybrid network of fiber optic and broadband coaxial cable is better suited for supporting the current and future services than the existing narrowband facilities of the LECs. Network duplication is currently a reality.

and

> Within two years, Cox Cable Oklahoma City's state-of-the-art hybrid fiber/coax network will be completely deployed and capable of providing switched services to residences and businesses. Cox's fiber ring distribution architecture will allow a level of redundancy and reliability that exceeds any architecture

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[25] Id. at 29-5.

[26] Insight, p. 100.

employed by other telecommunications providers in the state.[27]

LECs cannot hold an essential "bottleneck" facility if, by the LEC's competitor's own admission, network duplication is currently a reality. This statement by Cox Cable clearly flies in the face of MFS' claims that a cable overlay is not a feasible alternative to the local loop and that it "involves serious technical challenges."[28] MFS cannot seriously claim that effective competition will not develop until "years from now." If alternate facilities exist in a market -- or will be completed in the near term -- then the alleged LEC "bottleneck" cannot be an essential facility required for competition to develop, and it cannot constitute a barrier to entry. Other providers already in the market, or wishing to enter the market, such as MFS for example, can obtain access to end users through the competitive provider's local distribution network, rather than the LECs. Clearly, the "bottleneck" alleged by MFS and others does not exist.

Alternate providers will take advantage of the new transmission capacities and technologies, thereby reducing the demand for traditional land-line services as well as any reliance they might have had on access to LECs' facilities. As the Insight Report states: "Wireless phone technology and the crashing costs of fiber-optic transmission equipment have effectively shattered

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[27] Comments of Cox Cable Oklahoma City, In Re: Inquiry of the Oklahoma Corporation Commission Concerning the Provision and Regulation of Competitive Intrastate Telecommunications Services, Cause No. PUC940000461, December 19, 1994 at pp. 2 and 6.

[28] MFS Petition at pp. 7-8.

whatever local bottleneck might have existed in the major metropolitan areas."[29]

Satellite services, both fixed and mobile, amassed revenues of $1.85 billion in 1993, up 23%.[30] Although the bulk of current domestic satellite capacity is used for video transmission, full implementation of direct broadcasting satellite (DBS) will have an enormous impact on the satellite and telecommunications markets. Virtually all new domestic capacity in the near term is dedicated to DBS, with three satellites scheduled to be launched in 1995 and as many as eight in 1996.[31] The proliferation of digital satellite transmission capacity will facilitate many applications, including high-speed data communications. Private networks that use very small aperture terminals (VSATs) incorporate data, video and voice communications. Use of VSATs has grown significantly faster with 270 domestic VSAT networks installed in 1993 and revenues from domestic VSATs estimated at more than $45 million in 1993, up 25%.[32] Mobile satellite services continue strong growth with revenues estimated at $245 million in 1993, up 22%, and are expected to "explode" by the mid-1990's, when new satellites solely dedicated to mobile communications are launched.[33] Overall, satellite services revenues from both fixed and mobile applications grew by almost 25% in 1994 to around $2.3 billion, and are expected

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[29] Insight at p. 11.

[30] U.S. Industrial Outlook 1994 at 29-15.

[31] Id. at 29-17.

[32] Id. at 29-17.

[33] Id. at 29-18.

to exceed $3 billion by the late 1990's.[34] Satellite services will thus be increasingly used for voice and data communications, providing yet another choice of distribution medium beyond the BOCs' established facilities.

III. UNBUNDLING OF THE LOCAL LOOP IS NOT IN THE PUBLIC INTEREST.

A. Unbundling of the Local Loop Will Not Promote Efficient Competition.

MFS argues that "[u]nbundled loops are necessary to provide competitive local exchange carriers access to the essential bottleneck distribution facilities controlled by the monopoly local exchange carriers."[35] However, MFS has far overstated its case. It confuses the terms "competition" and mere "entry" into telecommunications markets; and it fails to analyze the basic economics of unbundling, which indicates when unbundling is in the public interest and when it is not. Instead, MFS has made the blanket assumption that access to unbundled loops by firms such as itself is automatically in the public interest, when in fact, there are many other determinants of the efficacy of unbundling.

1. The Efficacy Of Any Unbundling Proposal Depends On The Price Of Access To The Unbundled Components.

MFS argues that the unbundling of loops is in the public interest, however, this argument ignores one very important factor: the price that MFS must pay for access to the unbundled loops it desires. One of the primary determinants of the desirability of any unbundling proposal is the terms of access to the unbundled

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[34] Id. 29-20.

[35] MFS Petition at 12.

facility, but MFS has made two fundamental errors in this regard. First, it has blindly assumed that unbundling is automatically in the public interest, with no regard for how the price of access to unbundled facilities affects the economic efficiency of unbundling. Second, it has erroneously assumed elsewhere in its Petition that the price of access to unbundled facilities should be capped at incremental cost. Both of these fundamental errors are fatal to MFS' Petition.

First, if unbundling takes place, the price of access to the unbundled facilities serves an extremely important role in the economic efficiency of the unbundling proposal. Economic efficiency is defined as the sum total of incumbent firm profits, entrants' profits, and consumer surplus in the retail, or downstream market[36] (in this case, local exchange service). Given this, it is clear that the price of access to unbundled facilities affects all three of these determinants of economic efficiency. It affects the incumbent firm's profits because it is what that firm may charge for access to its unbundled facility; price of access affects entrants' profits because it is what such firms must pay for access to the unbundled facility; and perhaps most importantly, it affects the degree to which consumers in downstream markets are made better off because the price of access determines the rates of entry of efficient firms whose presence in such markets can make consumers better off. Given this, the price of access to unbundled facilities serves as the primary determinant of whether an unbundling proposal makes any sense at all. The optimal price of

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[36] Kenneth E. Train, Optimal Regulation, 12-13 (1991).